

Preventing Elder Investment Fraud: Assessing for Vulnerability to Financial Exploitation

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Kentucky Medical Association Annual Meeting, Louisville, KY

Sept. 12, 2012



Ohio Valley Appalachia Regional



Acknowledgements of Project Team...

- Bob Roush, EdD, MPH, Principal Investigator
- Aanand Naik, MD, Co-PI
- George Taffet, MD, Chair, Internal Advisory Group
- Larry McCullough, PhD, Member, IAG
- Nancy Wilson, LMSW, Member, IAG
- Mark Kunik, MD, Member, IAG
- Whitney Mills, PhD, Assistant Project Director
- Elisa Rodriguez and Kristin Cassidy, Former Assistant Project Directors
- Jennifer Moye, PhD, Elder Capacity Assessment Consultant
- Janet Pinner, RN, PGCM, Nursing Continuing Education
- Wayne Howell, JD, Investor Education Consultant
- The physicians, nurses, social workers and investor educators in focus groups whose opinions and suggestions guided our efforts



Disclosure

- The presenters disclose that they received funding from the non-profit Investor Protection Trust
- Development of the Clinician Pocket Guide was made solely by members of the Baylor College of Medicine project group.

Special thanks to...

- University of Louisville, Department of Family & Geriatric Medicine
- KY Department of Financial Institutions, Securities Division
- The Investor Protection Trust for funding and for the educational materials

Learning Objectives – attendees should be able to...

- List key factors that increase an older person's vulnerability to elder investment fraud and financial exploitation.
- Describe common financial exploitation schemes and practices.
- Describe when to and where to refer patients deemed high risk to appropriate sources of assistance.

Biopsychosocial Factors of Aging

- Age-related changes
 - Environmental factors
 - Coping mechanisms

Age-related Changes

- Common changes with age
- Common geriatric problems

Environmental Factors

- Access to health care & resources
 - Where we live

Coping Mechanisms

➤ Losses

➤ Role changes

➤ Adapting

Selected Aging Demographics

- 1.2 billion older people worldwide in the year 2025
- Net increase of one million people 60 years of age worldwide monthly now;
- Leading edge of 77 million U.S. Baby Boomers reach age 65 in 2011
- 10,000 persons qualify for Medicare every day for the next 19 years!

Part 1: Goals...

- Raise clinical awareness of elder investment fraud and financial exploitation (EIFFE)
 - it's a serious, growing problem
 - what you can do about it
- Provide information and resources that can help you
 - based on your personal knowledge of a patient or client
 - but unclear how to ask about it or types of referral sources

EIFFE Can Happen to Anyone...



"To those seniors and especially elderly veterans like myself, I want to tell you this: You are not alone and you have nothing to be ashamed of. If elder abuse happened to me, it can happen to anyone."

Mickey Rooney
Testimony to Senate Special Committee on Aging₁₂
March 2, 2011

Raising Awareness (1)

- Why addressing this issue is so important...
 - vulnerable population is large and growing
 - financial health affects overall health
 - financial loss impacts available food, medication, and other health services

Raising Awareness (2)

- Almost a third of elders live within 150% of the poverty level
- Average savings of 50 year old boomers is about \$50K

Raising Awareness (3)

- Even older adults with savings in the low millions can't afford to lose substantial amounts, as they don't have the time to make it up.
- Current resources exist for patients only after harm occurs to them; little is available to prevent EIFFE
- Age related diseases or injuries can contribute to older adults' vulnerability to EIFFE

Raising Awareness (4)

- Of all elder abuse cases reported 30% were for financial exploitation (National Elder Abuse Study, 1998)
- Two nationally representative studies found 4-5% of older adults in the US have been victims of financial abuse (Acierno et al., 2010; Laumann et al., 2008)
 - similar prevalence to heart attacks and higher than that of congestive heart failure (1-2%)

What can you do to help prevent EIFFE?

- Simple office-based assessments of potential vulnerability to EIFFE
 - checklist of situations associated with high risk
 - assessment questions
 - referral sources for those deemed potentially at high risk
 - recent paper on office-based assessments by E. Widera et al. *JAMA*, Feb. 16, 2011

Adding Financial Exploitation to the Geriatric Checklist

PRESCRIPTION FOR PREVENTION

PATIENT NAME: _____

D.O.B. _____
DATE: _____

Rx

- ☒ Check Blood Pressure
- ☒ Monitor Blood Sugar
- ☒ Discuss Dangers of Financial Fraud

_____, MD

_____, INSTITUTE

Important Areas for EIFFE

- Vulnerability [risk] factors
- Financial capacity issues
- Investment and financial knowledge
- Undue influence of others

Vulnerable Older Adults

- An older adult is vulnerable if he/she demonstrates characteristics or performs behaviors that are associated with subsequent morbidity, disability, or death.

Financial Capacity

- “The ability to make and execute decisions consistent with personal preferences and values regarding finances.”

Investment Fraud and Financial Exploitation

- “The illegal or improper use of another individual’s resources for personal profit or gain.”

Undue Influence

- “When exploiters, whether family, acquaintances, or strangers, use their power to deceptively gain control over the decision making of a victim. Often involves financial exploitation.”

Case Scenario 1

- Mr. Allen is an 83-year-old man who is still living in his own home but who lacks financial capacity due to early dementia. Mr. Allen has involved his son Steven in some financial decisions. While Mr. Allen is a conservative investor, Steven likes to take risks. He invests a large portion of his father's retirement funds in a risky stock. Soon afterwards, the stock falls dramatically. Out of embarrassment, Steven doesn't tell his father what he has done. (Is this fraud?)

Case Scenario 2

- Mrs. Hartford is an 86-year-old recent widow. Her daughter, Mae, hires a caregiver, Susan, to help around the house. Mae notices that Susan is acquiring lots of new things. Then Mae discovers she cannot access her mother's accounts anymore. She visits her mother; Susan is nowhere to be found.
- Susan had unduly influenced Mrs. Hartford into signing a durable power of attorney. She then depleted Mrs. Hartford's retirement funds. Once Mae realized what was happening, Susan took what was left of Mrs. Hartford's savings and fled. (Is this fraud?)

Case Scenario 3

- A 79-year-old man allows his financial advisor to purchase an equity-indexed annuity* in the hopes that this will provide him economic security should he live to 85 and not have the same level of resources he presently has. The advisor does not disclose the “shrouded” information that the annuity doesn’t begin until age 90 nor the high percentage surrender fee should the gentleman decide to change his mind. (Is this fraud?)

*Sold by insurance agents regulated by KY Department of Insurance
<http://insurance.ky.gov> 800-595-6053

Common EIFFE Schemes by Responsible Party (1)

- Caregivers or family members
 - use older adult's personal materials for own gain, such as: retirement funds, social security checks, etc.

Common EIFFE Schemes by Responsible Party (2)

➤ Trusted financial advisors

- sells inappropriate annuities or front-end loaded mutual funds, then churns them to generate inordinately high fees that can result in decumulation of assets

➤ Strangers

- scams by phone, email, or mail

Responsible Party Characteristics

➤ Traits

- caregiver
- male, usually relative
- living with the patient
- economically dependent on the patient
- history of mental illness, including substance abuse and antisocial behavior or other health problems

Relationship Between Undue Influence and Vulnerability

- An increase in dependency on others
 - arises from vulnerability
 - increases chances of being unduly influenced by others

Part 2: Clinical Assessment of Vulnerable Older Adults

- Simple office-based assessment of potential vulnerability to EIFFE
 - recommended questions you can add to patient's waiting room paperwork
 - assessment questions clinician asks during visit using *Clinician's Pocket Guide*

A Clinician's Pocket Guide

Pocket Guide on Elder Investment Fraud and Financial Exploitation

Should I be concerned?

Red Flags in patient/client history:

- ☐ Social Isolation
- ☐ Bereavement
- ☐ Dependence on another to provide care
- ☐ Financially responsible for adult child or spouse
- ☐ Alcohol or drug abuse
- ☐ Depression or mental illness



Red Flags from clinical observations:

- ☐ Cognitive problems
- ☐ Fearful, emotionally labile, or distressed
- ☐ Suspicious, delusional
- ☐ Change in appearance, poor hygiene
- ☐ Accompanied by caregiver who is overly protective; dominates patient/client
- ☐ Change in ability to perform activities of daily living, including self-care, daily finances, medication management



Should I be concerned?

- Red flags in patient/client history – situations or reasons patients may be at higher risk for vulnerability
- Red flags from clinical observations – traits of a patient who may be at risk for vulnerability

Red Flags in Patient/Client History

- Social Isolation
- Bereavement
- Dependence on another to provide care
- Financially responsible for adult child or spouse
- Alcohol or drug abuse
- Depression or mental illness

Prevalence of Depression

- 20% of older adults have Major Depressive Disorder (MDD) or some symptoms of depression.
- Depression as a risk factor: older adults who are abused tend to be > depressed compared to those who aren't.
- Depression as a consequence: older adults can develop depression as a result of being abused or exploited.
 - leaves them open to even more exploitation

NIH Senior Health: <http://nihseniorhealth.gov/depression/aboutdepression/04.html>

NCEA: http://www.ncea.aoa.gov/NCEAroot/Main_Site/Library/Statistics_Research/Research_Reviews/emotional_distress.aspx

Red Flags from Clinical Observations (1)

- Fearful, emotionally labile, or distressed
- Suspicious, delusional
- Cognitive problems

Prevalence of Cognitive Problems

- 35% (8.8 million) of Americans over the age of 71 have either
 - mild cognitive impairment (MCI)
 - dementia
 - changes in executive cognitive functions*

* Plassman, BL et al. *Annals of Internal Medicine*, Vol. 148, No. 6, pp. 427-434, March 18, 2008 ³⁷

MCI and Financial Exploitation

- MCI patients are 4 times more likely to make errors than controls*
- Damage to the prefrontal cortex makes affected elders less risk averse, i.e., willing to gamble**

*Okonkwo O. et al. *Journal of the American Geriatrics Society*, 2006

**Denburg N. *Annals of the New York Academy of Sciences*, December 2007

Red Flags from Clinical Observations (2)

- Change in ability to perform activities of daily living, including self care, daily finances, medication management
- Accompanied by caregiver who is overly protective; dominates patient/client
- Change in appearance, poor hygiene

Neglect and Vulnerability

- A change in appearance or poor hygiene can indicate neglect; self or by caregiver
- Neglect accounts for most reports of elder abuse*

Introducing the Issue to Your Patient

- *“We find that some older adults worry about money; may I ask you a few questions about this?” or*
- *“I just read a NY Times article about elders being financially exploited and thought I ought to talk to my mother and my patients, too.”*
- What other opening questions do you think would be good ones?

“When Abuse of Older Patients Is Financial” *NY Times* March 2, 2011



- Elizabeth Olson's story about Robert Parker, MD, who took a CME course on EIFFE in San Antonio in 2009, and how he uses the Clinician's Pocket Guide to screen his patients. (Photo used by permission from Lisa Krantz for the *NY Times*.)

Questions You Can Ask (1)

- Who manages your money day to day?
How is that going?
- Do you run out of money at the end of the month?

Questions You Can Ask (2)

- Do you regret or worry about financial decisions you've recently made?
- Have you given power of attorney to another person?
- Do you have a will? Has anyone asked you to change it?

Do I probe deeper or refer?

- If answers raise suspicion:
 - go to four referral sections in pocket guide or
 - probe for further details (See Financial Concerns Checklist which may be added to the patient/client information packet and completed during intake.)

Financial Concerns Checklist (1)

➤ Are you having any of the following common concerns?

- ☐ I have trouble paying bills because the bills are confusing to me.
- ☐ I don't feel confident making big financial decisions alone.

Financial Concerns Checklist (2)

- ☐ I don't understand financial decisions that someone else is making for me.
- ☐ I give loans or gifts more than I can afford.
- ☐ My children or others are pressuring me to give them money or change my will.

Financial Concerns Checklist (3)

- ☐ People are calling me or mailing me asking for money, lotteries.
- ☐ Someone is accessing my accounts or money seems to be disappearing.

What types of referral may be needed? (1)

- Help with managing money or other care tasks.
 - poor resource management or limited resources available; needs assistance with finances, meals, transportation, ADL's.
- Legal advice or protection.
 - needs assistance with financial planning or legal documentation.

What types of referral may be needed? (2)

- Fraud and exploitation may have occurred.
 - needs legal counsel
- Further medical evaluation.
 - needs assessment for cognitive, neurological, or other conditions

Ethical Considerations

- Concerns about calling any local or state regulatory agency, even though it is mandatory and failure to do so is unlawful
- Literature suggests talking to the patient and the possible responsible party individually

Interactions with Possible Responsible Party (1)

- Use non-confrontational demeanor
- Ask about relationship to the patient
- Discuss patient's daily activities and routines
- Discuss any of patient's special needs

Interactions with Possible Responsible Party (2)

- Observe for following behaviors:
 - demeaning comments about the patient
 - defensive, suspicious attitude
 - hostility about your inquiries
 - threat to change doctors

Referral Sources in Your State (1)

- Investor Protection

KY Department of Financial Institutions, Securities Division

800-223-2579

<http://kfi.ky.gov>

- United Way – 211 local hotline

www.211.org

- National Association of Professional Geriatric Care Managers

www.caremanager.org

- Case Management Society of America

www.cmsa.org

Referral Sources in Your State (2)

- National Academy of Elder Law Attorneys (NAELA)

www.naela.org

- Legal HelpLine for Older Kentuckians Through the Access to Justice Foundation
800-200-3633 www.ajsky.org

Referral Sources in Your State (3)

- KY Department of Financial Institutions, Securities Division 800-223-2579 <http://kfi.ky.gov>
- Adult Protective Services (APS), Adult Abuse Hot Line 800-752-6200
<http://chfs.ky.gov/dcbs/dpp/Adult+Safety+Branch.htm>
- Attorney General's Office, 502-696-5300
<http://ag.ky.gov/Pages/protectingseniors.aspx>
- Department of Insurance, 800-595-6053 or 502-564-3630, TTY 800-648-6056 <http://insurance.ky.gov/>
- Local Commonwealth Attorney's Office
<http://ag.ky.gov/criminal/pac/Pages/default.aspx>

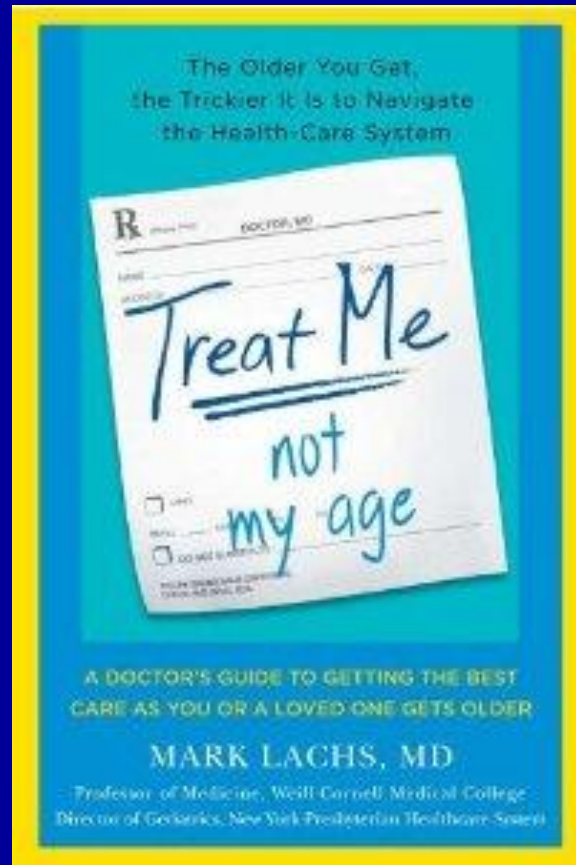
Referral Sources in Your State (4)

- Appropriate specialists such as a geriatrician, neurologist, psychiatrist, or psychologist may be warranted.
- Reporting to Adult Protective Services is required by the laws of most states and grants immunity from civil or criminal liability for professionals who report suspected cases of abuse
- To find your state's APS contact information to make confidential reports, use this link:
<http://www.apsnetwork.org/Abuse/index.html>

Part 3: What You Can Say to Your Patients ...

- Be aware of our own vulnerability
- Be aware of who wants your money
- Be aware of how you can protect yourself
- Be aware of who can help you

Immunize Your Patients from Bad Financial Decisions*



- Chapters 17 and 18 in geriatrician Mark Lach's book deal with aging and money issues.*
- Citing works like this helps patients and their caregivers appreciate your concerns.

Investor Education and Protection



Kelly May, BA
KY Department of Financial Institutions
Securities Division



Investment Fraud Affects Everyone

In the United States, **BILLIONS** of dollars are lost each year to investment fraud and scams.

These scams affect both the rich and poor; the sophisticated and the unsophisticated; the timid, the greedy, and the elderly.



Role of the State Securities Regulator

- Each State has a Securities Regulator to protect its citizens from investment fraud:
- KY Department of Financial Institutions, Securities Division
800-223-2579 <http://kfi.ky.gov>

Role of the State Securities Regulator

- Your State Securities Regulator:
 - **Licenses** investment professionals
 - **Registers** certain securities offered to the states' investors
 - **Investigates** investor complaints and potential cases of investment fraud
 - **Enforces** state securities laws
 - **Examines** brokerage and investment adviser firms to ensure compliance with securities laws and maintenance of accurate records of client accounts
 - **Reviews** certain offerings that are not exempt from state law
 - **Educates** investors and provides the tools necessary to make informed financial decisions
- Your State Securities Regulator can:
 - Verify that a broker-dealer or investment adviser is properly licensed
 - Provide information about a broker-dealer's prior run-ins with regulators that led to disciplinary or enforcement actions, serious complaints that may have been lodged against them, their educational background and previous work history

Investment Products and Vehicles

- A Security (also called an investment) is a financial instrument entitling the owner to specified types of financial benefits.
- Products commonly referred to as securities:
 - Stocks, bonds, notes, options, debentures and convertible certificates
- Products not commonly referred to as securities, but still subject to the laws governing securities:
 - Interests in mineral/oil rights, investment contracts and promissory notes
- Common investment Vehicles:
 - IRAs (traditional and Roth); mutual funds; exchange traded funds (ETFs); insurance products, i.e. annuities; and employer sponsored retirement plans i.e. 401(k) plans

What is Investment Fraud?

- Investment fraud, also known as stock and/or securities fraud, violates securities laws when investors are induced to make purchase or sale decisions on the basis of false information, frequently resulting in losses.
- Investment fraud can take many forms including unsuitable investments, fraudulent offerings, unregistered products, unlicensed advisers/brokers or theft or misappropriation of funds.
- In the U.S., Billions of dollars are lost each year to investment fraud and scams.

Do investors really fall for schemes?

- **According to the 2010 IPT Elder Fraud Survey:**
 - More than 7.3 million older Americans – one out of every five citizens over the age of 65 – already have been victimized by a financial swindle
- **According to a 2003 University of Georgia Survey:**
 - **57%** of respondents agreed if an investment is registered with the SEC, it has been reviewed to make sure its safe!
 - **26%** agreed that day trading is a good way to make money quickly!
 - **37%** agreed that variable annuities are usually good investments, no matter what your age!
 - **26%** agreed that if you're smart and invest in the right things, you can make a lot of money quickly without risk!
 - **73%** agreed that a very high rate of return is okay as long as the investment is guaranteed or bonded

Who Needs to be Registered to Sell Securities?

➤ Brokerage Firms

- Also known as broker-dealers
- Investors maintain their securities accounts with these firms, which need to be registered to do such business

➤ Securities Salespersons

- Commonly referred to as stockbrokers; work for broker-dealer firms
- Individuals with whom investors deal directly when effecting transactions in their accounts
- They typically receive commissions when investors purchase or sell securities

Who Needs to be Registered to Sell Securities?

➤ Investment Advisors

- A person who, for compensation, is engaged in the business of providing advice, making recommendations, issuing reports or furnishing analysis regarding securities
- Either a natural person or business entity can be an investment advisor

➤ Things to consider with an Advisor:

- Federally registered, State only registered
- Fee-based only, Commission only

What You Should Expect from an Advisor

- **Full Disclosure: You are entitled to complete and accurate information about an advisor and any securities they recommend to you**
- Work history and background of individual and firm
- Information on risks, obligations, and costs
- Investment to be suitable based on experience, finances, age
- Copies of forms and agreements
- Monthly account statements
- Clear and understandable terms and conditions
- Timely access to your funds
- Prompt attention to problems and complaints
- Knowledge of commissions, sales charges, service charges, etc.

Common Advisor Scams and Schemes

- Suitability and “know your customer”
 - Net worth, income, age, investment experience, capacity to understand
 - Other investments
 - Risk tolerance
- Unauthorized transactions (Power of Attorney Abuse)
- Margin trading
- Churning
- Unreasonable expectations
- Complex investments
- High fees and expenses

Common Types of Fraud

- Investment Fraud
 - Affinity fraud
 - Churning
 - Lack of suitability
 - Theft in brokerage accounts
 - Internet investment scams
 - Ponzi and pyramid schemes
 - Oil & gas schemes
 - Promissory notes
 - Coins & precious metals
 - Nigerian emails
- Caregivers/Family/Friends
 - Power of Attorney
 - Change of last will and testament
 - Property conversion

Affinity Fraud

- Scams that target religious, ethnic and/or professional and other groups
- Schemers use statements such as: “You can trust me because I’m like you” or “We share the same background and interests so let me help you make money.”
- In short, the tight-knit structure of many groups is a perfect environment for criminals

How To Spot a Con Artist

- Promise no risk with high rewards/returns
- High pressure sales techniques - offer is for a “limited time” only
- Spelling and grammatical errors
- Offer is for YOU only or a “select group”
- Pressure for an immediate response
- Requires an advance payment
- “Cash only” or checks made out personally
- Promises to provide paperwork “later”
- Often ask for personal information such as bank account or social security number
- Push poorly understood or complex products
- Ask you to sign black forms or documents
- Inability to contact an independent company representative with questions
- Offers that are too good to be true

Self-Defense Tips

- Before you buy, check the background of anyone attempting to sell you securities by contacting your State Securities Regulator
- Don't accept statements from your manager alone – check for independent statements from the brokerage firm
- Don't send money directly to the money manager – make out checks to the third-party independent brokerage account
- Don't judge a book by its cover / never invest based on reputation of word of mouth
- Watch out for salespeople who prey on your fears
- Monitor your investments and ask tough questions
- Look for trouble retrieving your principal or cashing out profits
- Don't let embarrassment or fear keep you from reporting fraud
- Read & understand your monthly statement – report problems to your broker or his/her manager
- Unknown caller offering investment product: “HANG IT UP”

Investigate Before You Invest!

- Check out your broker/advisor and any securities before committing any money or signing any paperwork
- Deal only with registered individuals and reputable firms; ask questions and get documentation; keep and read documents
- Check on licensing or registration status, disciplinary history or pending arbitration and employment history for the past 10 years through the Central Registration Depository (CRD) at: www.finra.org/Investors/ToolsCalculators/BrokerCheck/
- Contact KY Department of Financial Institutions, Securities Division, 800-223-2579 <http://kfi.ky.gov>; kfi@ky.gov
- Other useful websites:
 - State Securities Regulators via the North American Securities Administrators Association (NASAA) at: www.nasaa.org
 - Investor Protection Trust (IPT) at: www.investorprotection.org
 - Securities & Exchange Commission at: www.sec.gov

How Your Patient Can File a Complaint Form

- Facts generate outcomes
 - What happened
 - How did the victim learn about the opportunity
 - Who was there during the meeting
 - When and where did the meeting take place
 - Why did the victim decide to purchase the investment
 - Names, addresses, and telephone numbers
- The more facts, not feelings, that we have the better the potential outcome
- You can download or complete a complaint form online at:
<http://kfi.ky.gov/complaint/Pages/securities.aspx>

Complaint Form – What Should Be Attached

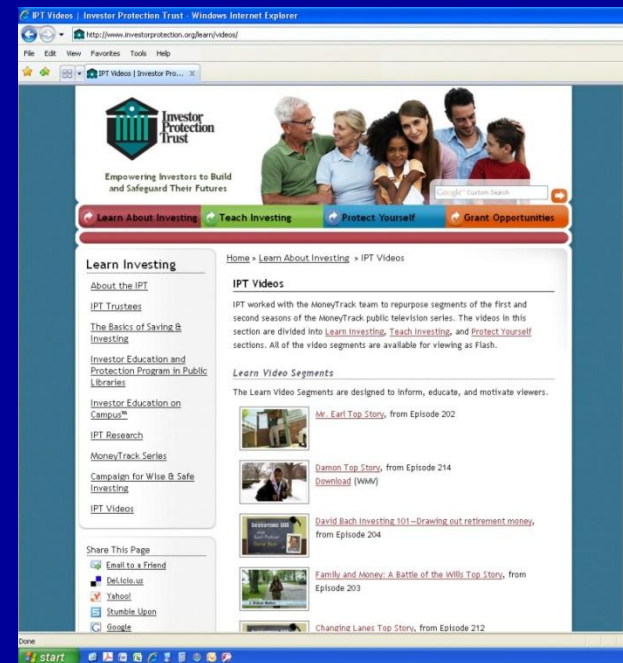
- Always keep a paper trail
 - Business card or other information that would list the name and company of the individual who may have sold investments to the client
 - Any monthly investment/account statements
 - Documentation we have mentioned (prospectus, brochures/pamphlets, etc.)
 - Website address

Additional Investor Education Resources

IPT Investor Education Booklets



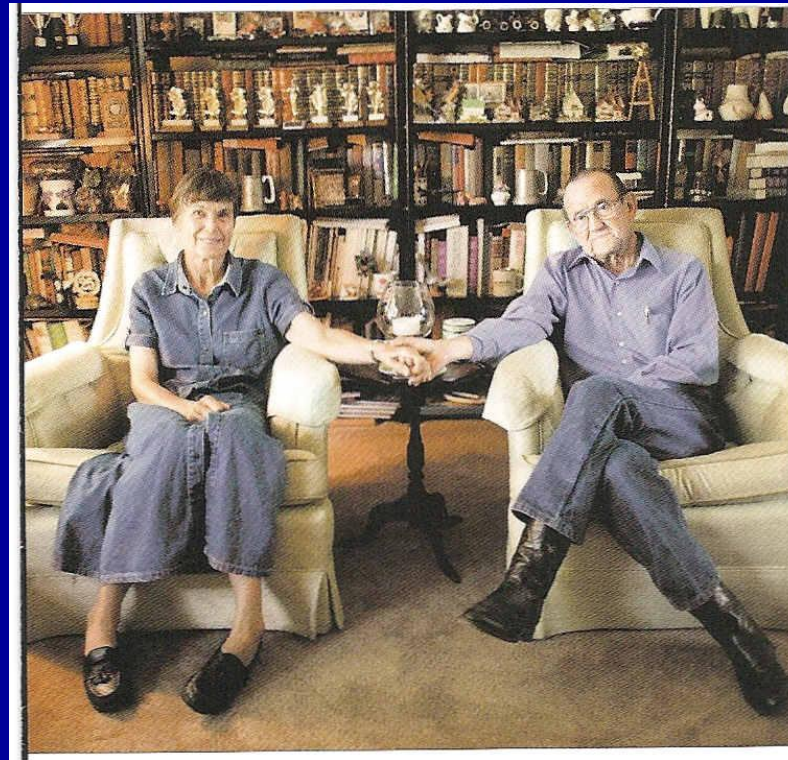
Video on the IPT Website



<http://kfi.ky.gov/public/Pages/invest.aspx>;
or www.investorprotection.org

Last Point: Don't Be Nice

- One day a nice man called Edna and Bob and offered them a low-risk investment with a guaranteed high rate of return:



THEY TOLD HIM TO STICK IT IN HIS EAR!

Contact Information

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